

# Exhibit 43

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.,*  
Civil Action No. 01-12257-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II  
In Support of United States' Common Memorandum of Law in Support of Cross-Motions for  
Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary  
Judgment

Sacramento, CA

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY )

AVERAGE WHOLESALE PRICE ) MDL No. 1456

LITIGATION )

-----X

THIS DOCUMENT RELATES TO ) Civil Action:

State of California, ex rel. ) 01-12258-PBS

Ven-A-Care v. Abbott )

Laboratories, Inc., et al. )

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WEDNESDAY, DECEMBER 3, 2008

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VIDEOTAPED DEPOSITION OF

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

by J. KEVIN GOROSPE, Pharm.D.

--oOo--

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 -----X

4 IN RE PHARMACEUTICAL INDUSTRY )

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6 -----X

7 THIS DOCUMENT RELATES TO ) Civil Action:

8 United States of America ex rel. ) 01-12257-PBS

9 Ven-a-Care of the Florida Keys, )

10 Inc., et al., v. Abbott )

11 Laboratories, Inc., Civil Action )

12 No. 06-11337-PBS; United States of )

13 America ex rel. Ven-a-Care of the )

14 Florida Keys, Inc., et al., vs. )

15 Dey, Inc., et al., Civil Action No.)

16 05-11084-PBS; United States of )

17 America ex rel. Ven-a-Care of the )

18 Florida Keys, Inc., et al., v. )

19 Boehringer Ingelheim Corp., et al.,)

20 Civil Action No. 07-10248-PBS )

21 -----X

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1 Manufacturer Price, and then subsequent to that  
2 Congress passed some additional legislative  
3 language that delayed the implementation of those  
4 pieces of the program until October of 2009.

5 So the Department is waiting for all of  
6 that to transpire before we can begin work on the  
7 AMP-based reimbursement.

8 Q. Okay. Manufacturers -- do  
9 manufacturers not report, generally speaking,  
10 their AMP data directly to California?

11 A. Manufacturers are only required to  
12 report AMP data in relationship to a supplemental  
13 rebate agreement.

14 Q. Okay. And for that AMP data -- does --  
15 does California recognize any confidentiality  
16 restrictions on the use of that AMP data?

17 A. Yes, we do.

18 Q. How so?

19 A. Until such time as the CMS begins  
20 publishing the AMP -- AMP data as pursuant to the  
21 federal statute, the Department will hold that  
22 AMP data as confidential pursuant to federal law.

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1 Q. Has the Department always treated AMP  
2 data as confidential?

3 A. Yes.

4 Q. For example, I think in earlier  
5 testimony today you discussed a period between  
6 1994 and May of 1996, I think, when there were --  
7 there was a supplemental rebate requirement that  
8 all manufacturers pay a supplemental rebate of 10  
9 percent of AMP or based upon 10 percent of AMP.

10 During that period to your knowledge  
11 did the Department treat the AM -- any AMP  
12 information that they may have received during  
13 that time as confidential?

14 A. Yes.

15 Q. And did the Department have any  
16 position about whether or not that confidential  
17 treatment would prevent the Department from using  
18 AMP information for purposes of determining  
19 reimbursements paid to pharmacies?

20 MR. BUEKER: Objection as to form.

21 THE WITNESS: Yes.

22 BY MR. HENDERSON:

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